

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**HEARING DATE  
August 22, 2019 at 10:00 a.m.**

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IN RE:

Chapter 11

**SEARS HOLDING CORPORATION, INC, et al,**

Debtors.<sup>1</sup>

Case No. 18-23538 (RDD)  
(jointly administered)

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**NOTICE OF MOTION OF U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE, SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A.,  
AS TRUSTEE, SUCCESSOR-BY-MERGER TO LASALLE BANK NATIONAL  
ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY CAPITAL I INC.,  
COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES,  
SERIES 2005-IQ9 FOR AN ORDER  
PURSUANT TO 11 U.S.C. §503and 507(a)(2),  
FOR THE PAYMENT OF ADMINISTRATIVE EXPENSES**

**PLEASE TAKE NOTICE**, that U.S. Bank, National Association as Trustee,  
Successor-in-interest to Bank of America, N.A., as Trustee, Successor-by-merger to  
LaSalle Bank National Association, as Trustee for Morgan Stanley Capital I Inc.,

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart stores of Texas LLC (8915); MyGofer LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRE Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Commercial Mortgage Pass-Through Certificates, Series 2005-IQ9 (“U.S. Bank as Trustee”), by and through its undersigned counsel Aronauer & Yudell, LLP, will move this Court for the entry of an order pursuant to 11 U.S.C. §§ 365(d)(3), 503 and 507(a)(2), for the Payment of Administrative Expense in the total sum of \$32,749.59 (the “Motion”). A hearing on the annexed Motion will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601 (the “**Bankruptcy Court**”), on **August 22, 2019** at **10:00 a.m. (EST)**, or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections (the “Objections”) to the Motion shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules, shall be filed with the Bankruptcy Court and served in accordance with the Amended Order Implementing Certain Notice and Case Management Procedures, entered on November 1, 2018 (ECF No. 405), so as to be filed and received no later than **August 15, 2019** (the “**Objection Deadline**”).

**PLEASE TAKE FURTHER NOTICE** that if no Objections are timely filed and served with respect to the Motion, the relief requested in the Motion may be granted without a hearing.

Dated: July 10, 2019

ARONAUER & YUDELL, LLP  
Attorneys for U.S. Bank as Trustee

By: /s/ Joseph Aronauer  
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APPLICATION OF U.S. BANK, NATIONAL ASSOCIATION  
AS TRUSTEE, SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A.,  
AS TRUSTEE, SUCCESSOR-BY-MERGER TO LASALLE BANK NATIONAL  
ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY CAPITAL I INC.,  
COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES,  
SERIES 2005-IQ9 FOR AN ORDER  
PURSUANT TO 11 U.S.C. §503and 507(a)(2),  
FOR THE PAYMENT OF ADMINISTRATIVE EXPENSES

U.S. Bank, National Association as Trustee, Successor-in-interest to Bank of  
America, N.A., as Trustee, Successor-by-merger to LaSalle Bank National Association,  
as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through  
Certificates, Series 2005-IQ9 ("U.S. Bank as Trustee"), by and through its attorneys  
Aronauer & Yudell, LLP, hereby requests, pursuant to 11 U.S.C. §§ 365(d)(3), 503 and  
507(a)(2), the payment of administrative expenses in the total sum of \$32,742.59 as more  
fully detailed herein.

**Background**

1. On or about October 15, 2018, the Debtor filed petitions for bankruptcy relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor has continued to operate its business and manage its properties as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. U.S. Bank as Trustee is the owner of the real property located at 3100 FM 365, Port Arthur, Texas 77642 (the “Property”) with respect to the Property. U.S. Bank as Trustee is the successor landlord and Sears is the tenant under an undated lease (the “Lease”). The building located on the Property housed a Sears store known as Sears store number 2637.

3. Debtor determined to reject the Lease by application dated April 30, 2019. See Docket No. 3449. By order dated May 15, 2019, the rejection was made effective as of May 15, 2019. See Docket No. 3884.

4. U.S. Bank as Trustee is the owner of the Property. A copy of the deed for the Property to U.S. Bank as Trustee is annexed as Exhibit A. As such, U.S. Bank as Trustee became the successor landlord under the Lease. A copy of the Lease is annexed as Exhibit B.

5. The administrative claim is made up of two elements. First, base monthly rent and common area maintenance charges ("CAM") is due for the month of May 2019.<sup>2</sup> The monthly base rent is \$17,031.06 and the monthly CAM charges are \$3,298.21 for a total of \$20,329.27.

6. Second, under § 27.4 of the Lease, Debtor owes real estate tax escalation charges for 2018. Annexed as Exhibit C are the 2018 real estate tax bills. Annexed as Exhibit D is a chart that shows there is \$59,679.44 due from Sears for the Sears real estate tax escalation.

7. There are seventy-six days (inclusive) from October 16 – December 31, 2018. Thus, there is a \$12,532.68 post-petition, administrative claim for real estate tax escalation charges calculated as follows:  $76/365 \times \$59,679.44 = .208\% \times \$59,679.44 = \$12,413.32$ . Combined with the \$20,329.27 for rent and CAM charges, there is a total of \$32,742.59 in post-petition lease charges that are due.

8. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 157 and §1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

9. Bankruptcy Code § 365(d)(3) requires payment of all rents reserved under a lease until it is assumed or rejected. This requirement is independent from the obligations required to establish an administrative claim. See In re Mainstream Access,

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<sup>2</sup> Section 8.03(a)(I) requires the monthly rent to be paid on the first day of the month. See Exhibit B: Lease, page 24.

Inc., 134 B.R. 743, 749 (Bankr. S.D.N.Y. 1991). See generally 3 Collier's on Bankruptcy, ¶ 365.04[b] (16th ed. 2019).

WHEREFORE, U.S. Bank as Trustee respectfully requests the entry of an order directing Kmart to forthwith pay the sum of \$32,749.59 to U.S. Bank as Trustee as and for an expense of administration and granting such other and further relief as is just and proper.

Dated: July 10, 2019

ARONAUER & YUDELL, LLP

Attorneys for U.S. Bank as Trustee

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